

JP

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

BARBARA SCHWAB et al., individually and  
on behalf of all others similarly situated, )  
Plaintiffs, )  
v. )  
PHILIP MORRIS USA, INC. et al., )  
Defendants. )

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT  
Civil Action No. CV 04-1945-N.Y.  
★ FEB 28 2005 ★  
BROOKLYN OFFICE

MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS  
REPRESENTATIVES AND CO-LEAD COUNSEL

Plaintiffs bring claims under the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1962(c) and (d), on behalf of a class of individuals who were defrauded into purchasing “light” cigarettes by Defendants’ decades-long scheme to portray “light” cigarettes as safer and less harmful than “regular” cigarettes. Defendants knew, however, that “light” cigarettes were not safer or less harmful than “regular” cigarettes and may, in fact, be more hazardous than “regular” cigarettes. As a result of this fraud, Plaintiff have been harmed financially and seek to recover economic damages unrelated to personal injury.

Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs hereby move for certification of this action as a class action and for the appointment of class counsel. Plaintiffs respectfully request that the Court certify the following class:

All United States residents who purchased in the United States, not for resale, cigarettes labeled as “Lights” and/or “Light” (collectively “light cigarettes”) that were manufactured and/or sold by Defendants during the period commencing on the first date that

Defendants began selling light cigarettes until the date trial commences, and who are not, as of the date of trial, members of a certified state class seeking economic damages stemming from their purchases of light cigarettes. Excluded from the Class are individuals who are directors and officers of the Defendants' corporations, their parents, subsidiaries and/or affiliates, the Judge handling this case and members of his or her immediate family and the Judge's staff.

As set forth in Plaintiffs' Memorandum of Law (filed under seal), the proposed class and the named plaintiffs satisfy all of the Rule 23 requirements. The class and named plaintiffs meet the Rule 23(a) requirements of numerosity, commonality, typicality and adequacy. In addition, the class also satisfies the Rule 23(b)(3) requirements that common issues predominate and can be shown through common proof and that a class action is a superior method of trying these claims. Finally, Plaintiffs' injunctive claims are proper for certification under Rule 23(b)(2).

Plaintiffs also respectfully request that this Court appoint Barbara Schwab, Susan Bailey, Barbara Bishop, Trevor Campbell, Fergal Furlong, David Rogers, Patricia Scocozza, and Jim Sherman as representative plaintiffs and appoint Cohen, Milstein, Hausfeld & Toll, P.L.L.C. and Finkelstein, Thompson, & Loughran as Co-Lead Class Counsel in accordance with Federal Rule of Civil Procedure 23(g). The grounds for this motion are set forth in detail in Plaintiffs' Memorandum of Law.

Dated: February 28, 2005

Respectfully submitted,



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